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*Attorneys for Defendant/Counterclaimant Martin Tripp***UNITED STATES DISTRICT COURT****DISTRICT OF NEVADA**

TESLA, INC., a Delaware corporation,

Plaintiff,

v.

MARTIN TRIPP, an individual,

Defendant.

**AND RELATED COUNTERCLAIM**

Case No.: 3:18-cv-00296-LRH-CBC

**CASE MANAGEMENT REPORT**

1 Plaintiff Tesla, Inc. (“Plaintiff” or “Tesla”) and Defendant Martin Tripp (“Defendant” or  
2 “Tripp”) hereby submit the following case management report.

3 **1. Statement of the Case**

4 Plaintiff’s Statement: This action arises from the misconduct of Martin Tripp, a former  
5 employee of Tesla, who – while he was working for the company – collected and stole Tesla’s  
6 confidential trade secret information and then transferred this information to third parties to harm  
7 Tesla. Incredibly, Tripp’s illegal actions have continued even after the initiation of this lawsuit.  
8 Only weeks ago, Tripp took to Twitter and posted screenshots and excerpts from confidential Tesla  
9 documents he stole from the company, photographs of proprietary Tesla equipment and facilities,  
10 and incendiary and false statements about Tesla. Tesla seeks to hold Tripp accountable for these  
11 actions and to recover damages for the harm he has caused the company.

12 Within a few months of joining Tesla in October 2017, Tripp’s managers identified Tripp as  
13 being disruptive and combative with his colleagues. As a result of these and other issues, on or  
14 around May 17, 2018, Tripp was assigned to a new role. Tripp retaliated against Tesla by stealing  
15 confidential and trade secret information and disclosing it to members of the media. Tripp also  
16 made false claims to the media about the information he stole. For example, Tripp claimed that  
17 punctured battery cells had been used in certain Model 3 vehicles even though no punctured cells  
18 were ever used in vehicles, batteries, or otherwise. Tripp also vastly exaggerated the true amount  
19 and value of “scrap” material that Tesla generated during the manufacturing process and falsely  
20 claimed that Tesla was delayed in bringing new manufacturing equipment online.

21 Tripp remains bent on harming Tesla at any cost, and not even this lawsuit has dissuaded  
22 him from disclosing Tesla’s proprietary information. On August 15, 2018 (nearly two months after  
23 this case was filed), Tripp publicly posted on Twitter information that he had stolen from the  
24 company, combined with fabricated data and other false information. Tripp tweeted screenshots of  
25 Tesla’s confidential operating systems, email, spreadsheets, and other non-public, proprietary  
26 material. Tripp also posted vehicle indemnification numbers (“VIN”) of certain Model 3s, falsely  
27 claiming that punctured battery cells were installed in those vehicles. To reiterate, no punctured  
28 cells were ever used in any Model 3 vehicles.

1 Less than one hour after Tripp's Tweetstorm began, Tesla alerted Tripp's counsel to the  
2 situation and demanded that Tripp take down the material. Tripp's counsel, however, could not get  
3 in touch with Tripp right away, resulting in Tesla's confidential information being publicly posted  
4 on Twitter for approximately 12 hours or more. Although Tripp's counsel eventually persuaded  
5 him to delete Tweets containing Tesla's proprietary information, the material is now forever public,  
6 causing irreparable harm to Tesla.

7 Tesla asserts claims against Tripp for violation of the Defend Trade Secrets Act (18 U.S.C.  
8 §§ 1836, *et seq.*); violation of the Nevada Uniform Trade Secrets Act (Nev. Rev. Stat. §§ 600A.10,  
9 *et seq.*), breach of contract; breach of fiduciary duty; and violation of the Nevada Computer Crimes  
10 Law (Nev. Rev. Stat. § 205.4765).

11 In response, Tripp asserted counterclaims for defamation, invasion of privacy/false light,  
12 and intentional infliction of emotional distress.

13 Defendant's Statement: After being recruited by Tesla, Tripp, a former technician for the  
14 U.S. Navy, was thrilled about moving to Nevada to work at Tesla's Gigafactory. Unfortunately,  
15 once he began his employment, Tripp became aware of numerous safety problems and production  
16 irregularities that were wasteful and dangerous to Tesla's employees, customers, and investors.  
17 After repeatedly reporting the serious safety and production issues to his managers and supervisors  
18 for months but seeing no corrective action, Tripp spoke with a member of the media to detail his  
19 concerns in an altruistic effort to make the public aware of the disconcerting and dangerous  
20 practices he had learned during his employment. As but one example, Tripp learned that over 700  
21 dented and/or punctured battery modules had been used in Tesla Model 3 vehicles and that to  
22 "rework" the modules, Tesla's technicians merely squeezed an adhesive into the dent/hole and  
23 glued a piece of clamshell over the adhesive to make the battery appear undamaged.

24 Furthermore, Tripp was reassigned to a different department at Tesla due to his refusal to  
25 clean up the mounds of scrap that were lying around the facility in a veiled attempt by his  
26 supervisor to make the workspace appear clean for a factory visit by Tesla's CEO, Elon Musk.  
27 Tripp refused to do so because he had been complaining about the mounds of scrap for weeks and  
28 then, only to appease Mr. Musk, did his supervisor take action. Tripp was reassigned the next day.

After being terminated by Tesla, Tesla proceeded to make multiple highly-publicized, inflammatory, false and defamatory statements about Tripp, seemingly in an effort to discredit Tripp. Further, it appears that for some time after the termination, Tesla somehow tracked Tripp somehow as it knew where Tripp was located. Tripp was thereafter forced to relocate out of the country for fear of his family's safety. Then, in this litigation, Tesla has attempted to enforce a highly restrictive protective order to keep clearly relevant information away from Tripp and out of the public eye. As a result, Tripp made additional comments on Twitter about Tesla, but has since deleted that account and all of his other social media accounts. It should further be noted that Tripp's Twitter posts were not done in an extortionary fashion, nor was Tripp selling information "to the highest bidder." Tripp was and remains concerned that Tesla has been less than candid to the public about safety problems and manufacturing defects in the Model 3 vehicles that put people's lives at risk.

In any event, Tripp disputes that the majority, if not all, of the items Tesla contends Tripp misappropriated and/or disclosed are in fact protectible "trade secrets" under federal and Nevada law. For example, some of the items are nothing more than pictures of semi-trucks that were readily observable by the general public.

Tripp denies liability under Tesla's claims against him and seeks damages for defamation, false light invasion of privacy, and intentional infliction of emotional distress.

## **2. Principal Factual and Legal Disputes**

**Plaintiff's Statement:** The principal legal and factual disputes in the case are as follows:

(a) Whether Tripp misappropriated Tesla's confidential, proprietary, and trade secret information, and thereby, committed one or more acts of actual or threatened misappropriation of trade secrets within the meaning of the Defend Trade Secrets Act, 18 U.S.C. §§ 1836, *et seq.*;

(b) Whether Tripp violated his duty to maintain the secrecy of Tesla's trade secrets by disclosing the information to others in violation of the Nevada Uniform Trade Secrets Act, Nev. Rev. Stat. §§ 600A.10, *et seq.*;

1 (c) Whether Tripp breached his obligations under the Employee Proprietary  
2 Information and Inventions Agreement that he signed electronically on October 6, 2017 (the  
3 “Proprietary Information Agreement”) by divulging confidential and proprietary information,  
4 combined with fabricated data and other false information, to third parties;

5 (d) Whether Tripp breached his duty of loyalty to Tesla by divulging  
6 confidential and proprietary information, combined with fabricated data and other false  
7 information, to third parties;

8 (e) Whether Tripp violated the Nevada Computer Crimes Law, Nev. Rev. Stat.  
9 § 205.4765, by accessing and transferring data and information from Tesla’s computer systems to  
10 third parties without authorization; and

11 (f) Whether statements Tesla allegedly made about Tripp were true,  
12 substantially true, expressions of opinion, and/or privileged.

13 Defendant’s Statement: In addition to those disputes identify by Tesla above, Tripp  
14 identifies the following disputes:

15 (a) Whether any of the information allegedly misappropriated and/or disclosed  
16 by Tripp actually constitutes protectible trade secret information under applicable federal and  
17 Nevada law;

18 (b) What damages Tesla suffered, if any, as the direct and proximate result of  
19 Tripp’s purported misconduct;

20 (c) Whether any of Tripp’s affirmative defenses excused and/or justified his  
21 actions;

22 (d) Whether Tesla’s statements about Tripp placed Tripp in a false light;

23 (e) Whether Tesla intentionally or recklessly caused Tripp to suffer emotional  
24 distress; and

25 (f) Whether punitive damages against Tesla are warranted as the result of its  
26 intentional and/or reckless conduct.

1           **3.     Jurisdictional Bases**

2           The Court has original jurisdiction of this action pursuant to 28 U.S.C. § 1331 because this  
3 action arises under the Defend Trade Secrets Act, 28 U.S.C. § 1836, *et seq.*, and has supplemental  
4 jurisdiction over the remaining claims under 29 U.S.C. § 1367.

5           This Court also has diversity jurisdiction of this action under 28 U.S.C. § 1332(a)(1) in that  
6 the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and  
7 Tesla, on one hand, and Tripp, on the other, are citizens of different States. Tesla is a Delaware  
8 corporation with its principal place of business in Palo Alto, California. Tripp is an individual who  
9 resides in Budapest, Hungary. Both parties seek damages in excess of \$1,000,000.

10          **4.     Parties**

11          Both parties have been served, have appeared in the action, and have answered each other's  
12 respective pleadings.

13          **5.     Additional Parties**

14          Neither party anticipates adding additional parties to the case or otherwise amending the  
15 pleadings. Pursuant to paragraph 3 of the Court's Discovery Plan and Scheduling Order (Dkt.  
16 No. 31), the last day to file motions to amend pleadings or add parties is October 9, 2018.

17          **6.     Contemplated Motions**

18          The parties anticipate dispositive motions may be filed in this case. Pursuant to paragraph 5  
19 of the Court's Discovery Plan and Scheduling Order (Dkt. No. 31), the last day to file dispositive  
20 motions is February 6, 2018. If necessary, the parties will file motions relating to discovery.

21          **7.     Pending Motions**

22          There are no pending motions.

23          **8.     Related Cases**

24          There are no related cases.

25          **9.     Discovery**

26                 (a)     The parties anticipate that party discovery will include interrogatories,  
27 requests for admission, and requests for and production of documents in their respective  
28

1 possession, including paper records and electronically stored information (“ESI”). The parties  
2 further anticipate that discovery will include third-party document and deposition subpoenas.

3 (b) The parties do not request changes to the discovery limitations imposed by  
4 the Federal Rules of Civil Procedure and LR 26-1(b).

5 (c) Unless otherwise stipulated or ordered by the Court, the parties agree that  
6 each deposition (except of person(s) designated under Federal Rule of Civil Procedure 30(b)(6))  
7 should be limited to one day of seven hours, as provided by Federal Rule of Civil Procedure  
8 Rule 30(d). At the appropriate time, the parties will meet and confer on the durational limit for the  
9 deposition of person(s) designated under Federal Rule of Civil Procedure 30(b)(6).

10 **10. Electronically Stored Information**

11 The parties agree that ESI should be produced in the form specified in paragraph 14 of the  
12 Court’s Discovery Plan and Scheduling Order (Dkt. No. 31).

13 **11. Privilege and Work Product**

14 The parties agree to be bound by Federal Rule of Evidence 502 and paragraph 15 of the  
15 Court’s Discovery Plan and Scheduling Order (Dkt. No. 31).

16 **12. Pretrial Disclosures**

17 Pursuant to paragraph 7 of the Court’s Discovery Plan and Scheduling Order (Dkt. No. 31),  
18 the disclosures required by Federal Rule of Civil Procedure 26(a)(3), and any objections thereto,  
19 shall be included in the pretrial order.

20 **13. Discovery Schedule**

21 The Court’s Discovery Plan and Scheduling Order (Dkt. No. 31) sets forth deadlines for  
22 (a) the completion of discovery (¶ 2); (b) amending the pleadings and adding parties (¶ 3);  
23 (c) disclosure of expert testimony (¶ 4); (d) filing of dispositive motions (¶ 5); and (e) the joint  
24 pretrial order (¶ 6). The deadlines are in compliance with LR 26-1(b).

25 **14. Local Patent Rules**

26 Not applicable, as this is not a patent case.  
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28

1           **15.     Alternative Dispute Resolution**

2           As set forth in paragraph 8 of the Court’s Discovery Plan and Scheduling Order (Dkt.  
3 No. 31), the parties certify that they have met and conferred about the possibility of using  
4 alternative dispute-resolution processes, including mediation, arbitration, and the Early Neutral  
5 Evaluation (“ENE”) process. The parties believe settlement efforts are premature and do not  
6 request the Court’s assistance at this time.

7           **16.     Jury Trial**

8           Both parties requested trial by jury. (Dkt. Nos. 1 & 25.) The parties estimate that trial of  
9 this matter will last seven days. As set forth in paragraph 9 of the Court’s Discovery Plan and  
10 Scheduling Order (Dkt. No. 31), the parties certify that they have met and considered a trial by  
11 magistrate judge pursuant to 28 U.S.C. § 636(c) and Federal Rule of Civil Procedure 73 and the use  
12 of the Court’s Short Trial Program. At this time, the parties do not consent to trial by magistrate  
13 judge or to the use of the Court’s Short Trial Program.

14           **17.     Other Matters**

15           Plaintiff’s Statement: The parties are in the process of negotiating a proposed protective  
16 order to facilitate the exchange of confidential, proprietary, and/or trade secret information that  
17 warrants special protection from disclosure and from use for any purpose other than prosecuting,  
18 defending, or resolving this case. Although the parties agree on most provisions of the proposed  
19 protective order, the parties need the Court’s assistance in resolving two remaining issues.

20           (a)     Attorneys’ Eyes Only Provision: Tripp demanded that Tesla strike from the  
21 proposed protective order provisions permitting Tesla to designate its trade secrets and other  
22 extremely confidential information as “Attorneys’ Eyes Only” (“AEO”). Tripp’s demand for  
23 access to Tesla’s trade secrets is unreasonable given the legal and factual landscape of this case.

24           As the Ninth Circuit has held, the use of AEO provisions is appropriate in cases, like this,  
25 that involve the exchange of trade secret information. *See, e.g., Brown Bag Software v. Symantec*  
26 *Corp.*, 960 F.2d 1465, 1471-72 (9th Cir. 1992) (affirming magistrate judge’s entry of protective  
27 order that limited disclosure of trade secrets to outside counsel and independent  
28 consultants/experts). In such cases, the party accused of trade secret theft does not have an



1 “unfettered right to the discovery documents.” *Id.* at 1472. Rather, a protective order with AEO  
2 provisions “strikes a reasonable balance” between shielding the party from personal knowledge of  
3 the opponent’s trade secrets while allowing access to such information through outside counsel and  
4 an independent consultant. *Id.* at 1471.

5 Here, Tripp’s demand to eliminate standard AEO provisions is particularly unreasonable.  
6 As discussed above, Tripp has repeatedly demonstrated that he cannot be trusted with access to  
7 Tesla’s extremely confidential materials. During the pendency of this action, Tripp publicly posted  
8 Tesla’s confidential materials on Twitter. This demonstrates that neither the existence of this  
9 action nor Tripp’s own lawyers could have dissuaded him from taking illegal action to harm Tesla,  
10 and that another outburst—via reinstated social media accounts, or some other channel—may be  
11 imminent. Thus, the risk to Tesla in allowing Tripp to have access to its most sensitive and  
12 confidential material is too great. This risk is particularly significant given that Tripp is apparently  
13 living abroad, where he may flout orders of the Court or ignore potential sanctions orders.

14 Tripp claims to need access to Tesla’s AEO materials to assist his lawyers in this case. As  
15 the Ninth Circuit has stated, however, Tripp does not have an “unfettered right” to access Tesla’s  
16 discovery documents. Tesla’s proposed protective order (attached hereto as Exhibit A) permits  
17 Tripp to view all materials that are designated “confidential.” (Ex. A ¶ 8(c)(i).) Tripp is only  
18 precluded from accessing AEO materials, which the protective order expressly limits to “extremely  
19 confidential and/or sensitive in nature and the Producing Party reasonably believes that the  
20 disclosure of such Discovery Material is likely to cause economic harm or competitive  
21 disadvantage to the Producing Party.” (*Id.* ¶ 9(a).) Tesla’s proposed protective order “strikes a  
22 reasonable balance” by giving Tripp’s outside counsel and consultants/experts access to AEO  
23 materials. It also provides a mechanism for Tripp to challenge designations that he does not agree  
24 merit AEO protection. (*Id.* ¶ 11.)

25 (b) Expert Notice Provision: Tripp also demanded that Tesla remove from the proposed  
26 protective order a provision under which the parties agree to give one another notice of which  
27 experts and consultants will have access to protected information. (*Id.* ¶ 10.) In response to  
28 comments by Tripp, and in an effort to achieve compromise, Tesla significantly narrowed this

1 provision, wholly excluding non-testifying consultant experts and limiting the information required  
2 to be exchanged. But despite these significant concessions, Tripp refused to agree to the provision,  
3 arguing that it grants Tesla a de facto “veto” power over his selection of experts.

4       Once again, given his prior behavior, Tripp’s position is untenable. Tesla is entitled to an  
5 assurance that Tripp will not share its confidential materials with individuals who will treat the  
6 material with as little care as he has. And the provision does not in any way give Tesla the veto  
7 power Tripp imagines; on the contrary, all the provision does is permit a party to “object in writing  
8 to [an expert] for good cause,” following which—if a meet-and-confer process is unsuccessful—  
9 that party is required to “seek relief from the Court.” Tesla therefore must ultimately justify to the  
10 Court any objection it has to Tripp’s experts. Tripp’s refusal to agree to even this narrow provision  
11 only validates Tesla’s concerns about what he intends to do with Tesla’s proprietary information.

12       For the foregoing reasons, Tesla respectfully requests that the Court enter Tesla’s proposed  
13 protective order, which is attached hereto as **Exhibit A**.

14       Defendant’s Statement: In addition to responding to Tesla’s additional statements, Tripp  
15 wishes to raise an additional component of the draft protective order.

16       (a)   Protective Order. Without knowing exactly what information Tesla believes would  
17 warrant designation as “Attorneys Eyes Only,” Tripp can only surmise that the majority of  
18 information produced by Tesla in this case will be designated as such. For example, Tesla has  
19 already designated its initial disclosure statement as “Confidential” notwithstanding the fact that  
20 the disclosure included nothing but a few names and generic description of documents (but no  
21 actual documents). Further, Tripp disputes that Tesla’s proffered Attorneys Eyes Only provision is  
22 limited to actual “trade secret” information as recognized under Nevada and federal law. While it  
23 is true that Tripp does not have an “unfettered” right to Tesla’s actual trade secrets, the only  
24 information Tripp will be seeking in this case is directly relevant to Tesla’s own claims and  
25 allegations it made against Tripp in public filings and/or other publications. For example, Tesla  
26 claims that Tripp “falsely modified” certain records of Tesla and “grossly exaggerated” the amount  
27 of “scrap” generated by Tesla, disclosed such “false” information to third parties, all while  
28 apparently coding and implanting “hacking software” on several of his co-worker’s computers to

1 “persistently export” Tesla information after he was terminated. Tripp is entitled to demand and  
2 review all of Tesla’s records, whether “trade secret” or not, that relate to such allegations.

3 Furthermore, the case cited by Tesla, *Brown Bag Software v. Symantec Corp.*, 960 F.2d  
4 1465 (9th Cir. 1992), is completely irrelevant. For one, that case, involving a claim of copyright  
5 infringement, was not a case with “allegations of trade secret theft.” Second, in that case, the  
6 parties were direct competitors of each other and the court needed to decide whether in-house  
7 counsel for one competitor should be allowed to review trade secret information of the other  
8 competitor. Here, Tripp is not even remotely a competitor of Tesla, and his review of documents  
9 would strictly be limited to assisting his counsel in defending against and prosecuting the claims.

10 To the extent Tripp’s statements during the pendency of this litigation are relevant, Tripp  
11 has deleted all of his social media accounts and is subject to direct order of the Court. He should  
12 not be barred, by the mere whim of Tesla’s identification of documents as “Attorneys Eyes Only,”  
13 from reviewing documents that are directly relevant to the claims brought against him in this case.  
14 Doing so would be extraordinarily prejudicial and is entirely unnecessary. Finally, Tripp’s draft of  
15 the Protective Order has a provision in which he may be shown “Attorney’s Eyes Only” material  
16 only for purposes of viewing and inspection, and may not “copy, photograph, or otherwise retain  
17 any” such material. This should be sufficient to allay Tesla’s concerns.

18 (b) Expert Notice Provision: Tesla has misframed its expert notice provision as though  
19 it is to be applied equally to both parties. But since virtually all (if not completely all) of the  
20 Protected Material in this case will be designated as such by Tesla, Tesla’s proposed expert notice  
21 provision will be deployed asymmetrically against Tripp by Tesla to obtain a tactical advantage.  
22 Tesla has already used the Protected Material designation generously, having designated its initial  
23 disclosure statement as “CONFIDENTIAL.” Thus, under Tesla’s proposed notice provision, Tripp  
24 cannot even provide a copy of Tesla’s initial disclosure statement to a prospective testifying expert  
25 without first giving Tesla advance notice and an opportunity to object. Tesla elected to sue Tripp,  
26 and it cannot now cry foul that it may have to relinquish its sensitive data to Tripp’s experts.

27 For the foregoing reasons, Tripp respectfully requests that the Court enter Tripp’s proposed  
28 Protective Order, which is attached hereto as **Exhibit B**. A redline to Tesla’s order is **Exhibit C**.

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Respectfully submitted,  
**HUESTON HENNIGAN LLP**

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